

**GOVERNMENT OF ANDHRA PRADESH**

**ABSTRACT**

SRIKAKULAM DISTRICT – Revision Petition filed by Smt M.Sanyasamma, wife of Late Sri Gopala Das --- Dismissed by the Government --- Writ Petition filed by Sri M.Venkata Rao, S/o Sri Late Gopala Das before the Hon'ble High Court against the orders of the Government in Memo.No.32037/Assn.I(3)/95-2., Dated 22.12.1999 -- Hon'ble High Court in its order Dated 01-05-2009 in WP No.563/ 2002 filed by Sri Muddapu Venkata Rao, have Set-aside the orders of the Govt., and the case remitted back to the 4<sup>th</sup> Respondent (Government) to consider the case of the petitioner afresh — Heard the Case afresh – Case posted for Final hearing 21-11-2009 at 3-30 PM - **Revision Petition Dismissed** duly vacating the stay granted by the Government in Govt.Memo.No.32037/Assn.I (3)/95, Dated 8.5.95. - Orders - Issued.

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**REVENUE (ASSIGNMENT -I) DEPARTMENT**

G.O.MS.NO. 1288

DATED:11-12-2009  
READ: the following :-

- 1) Revision Petition filed by Smt M.Sanyasamma, wife of Late Sri . Gopala Das, Resident of Salihundam village, Gara Mandal, Srikakulam District Dated 2.5.95 before the Government.
- 2) Govt.Memo.No.32037/Assn.I(3)/95-2.,Dated:22.12.1999 of Rev Dept.
- 3) `From the High Court of AP Orders in WP No.563/ 2002 filed by Sri Muddapu Venkata Rao, S/o Late Gopal Das, R/o of Salihundam village, Gara Mandal, Srikakulam district Dated 01-05-2009.
- 4) Govt.Memo.No.26445/Assn.I(1)/2009-1., Dated 26-06-2009.
- 5) From the Collector, Srikakulam Lr.Rc.No.1693/ 2002/ E2, dt.:30.06.2009 together with its enclosures.
- 6) Govt.Memo.No.26445/Assn.I(1)/2009-1.,Dated 09-07-2009, 15.7.2009, 29.7.2009, 16.9.09 and last Notice Dated 31-10-2009.
- 7) From the Collector, Srikakulam Lr.Rc.No.1693/ 2002/ E2, dated 15.7.2009. and 23.7.2009.
- 8) From the Advocate for the Petitioner, Written Arguments dated 3.12.2009.

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**ORDER:-**

Smt M. Sanyasamma, Wife of Late Sri M.Gopal Das,Resident of Salihundam village, Gara Mandal, Srikakulam district has filed Stay petition / Revision petition against the orders of the Joint Collector, Srikakulam passed in Rc.No.11814/ 87/ M6., Dated 16.5.1992 confirmed in CLR's Ref.No.BCW- 5 / 2514/ 92, dated 27.8.1994 by directing not to dispossess the petitioner from the scheduled land to an extent of Ac.2-50 Cts in Sy.No.1 of Salihundam village, Gara Mandal, Srikakulam district pending disposal.

2. Brief facts of the case are as follows:

One Sri Mudapu Gopal Das father of the petitioner was assigned an extent of Ac.2-50 in Sy.No.1 of Salihundam village of Gara Mandal, Srikakulam district by the then Tahsildar in R.Dis.No.16268/ 1973 Dated 20.2.1980 along with some others. The land in question was under the occupation of Sri .Gopal Das, father of the petitioner prior to grant of D-Form Patta. On the representation of some SCs to the Collector, Srikakulam district, and on the ground of prohibition of grant of assignment of river accretion poramboke without Ayan conversion, the assignment was cancelled vide proceedings Rc.No.11814/ 1987/ M6, Dated 16.5.1992 of the Collector, Srikakulam. Aggrieved by the said order, the petitioner approached the Government by filing Revision Petition.

3. Government have examined the matter earlier, and observed that the Joint Collector, Srikakulam in his proceedings D.Dis.No.11814/ 87 Dated 16.5.1992 has observed that the land in Sy.No.1., measuring Ac.226-40 of Salihundam village, Gara Mandal stands registered as Nagavali river. Lease patta was issued to Sri Muddapu Gopaldas for an extent of Ac.2-50 in 1969 and subsequently a D-Patta was issued in favour of Sri Muddapu Gopaldas for an extent of Ac.2-50 in R.Dis.No.16268/79 dated 20.2.1980 of Tahsildar, Srikakulam. It was further observed that the issue before him is whether the D-Patta was issued in violation of the conditions for such grant and whether it is liable for cancellation.

4. The assignee was given a show cause notice in Rc.No.11814/ 87 dated 25.10.89 and he was given an opportunity of being heard on 30-12-1991.

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5. The following violation of conditions were communicated to the assignee to enable him to rebut.

1. Since the assigned land is a River accretion poramboke which is prohibited to be assigned under BSO-15 para 35 sub-para 8, the assignment was objectionable.
2. ..Assignment of poramboke lands without Ayan conversion is objectionable.
3. According to Govt. instructions, only persons whose annual income does not exceed Rs.1800/- were eligible for assignment of Government land at this time. In this case the assignee's income exceeded the ceiling fixed by the Government.

6. Sri Muddapu Gopal Das, died in 1990 leaving behind his wife and three major sons. Sri M. Venkata Rao, 2<sup>nd</sup> son of the deceased filed his explanation on behalf of his mother. He contended that only Ac.0-30 Cts land fell to the share of the deceased by the time of grant of assignment and the income thereon was less than Rs.300/- per month. He has not furnished the other sources of income.

7. He appeared before the Jt.Collector, Srikakulam on behalf of his mother and gave a statement as follows:-

That the land in sy.No.1 "River accretion" of Salihundam village and leased out to his father and elder brother Sri Venunandhana Rao @ Ac.2-50 each, that during the year 1980 D-Pattas were issued to them in lieu of lease pattas, that his father died about 2 years ago, and during his life time, his father was cultivating the land. He further contended that the deceased assignee left behind him his wife and three sons.

8. The Joint Collector has therefore observed that in the village, they have a Tiled house which was deride by inheritance and also a separate thatched house and cattle shed where cows are kept. The assignee cannot therefore be classified as Land less poor. The Joint Collector, Srikakulam has also observed that the BSO-15 (35) (8) reads thus:

"Leased land not held on ryotwari tenure, river accretions and reformed land for which the former owners have ceased to pay the assessment are at the absolute disposal of the Government and should not be assigned, but should be leased out by auction for any period not exceeding ten years.

9. In this case, the classification of the land is "Nagavali river" and the land in question was effectively in possession of Government and as such it was not eligible for grant of any D-Patta. But however, the Tahsildar, Srikakulam granted a D-Patta in this case in favour of the assignee in R.Dis.No.16268/79 dated 20.2.80.

10. According to BSO 15 (18)(i) when the assignments were made by mistake of fact or owing to fraud, the Collector is competent to cancel such assignments. In this case, not only the assignment was made in favour of a landed rich, but there is violation of proviso of BSO-15 (35)(8) in assigning a "River accretion" land which is prohibited from assignment.

11. It is therefore established that the assignment in this case was granted for an extent of Ac.2-50 in Sy.No.1 of Salihundam village in Proceedings. R.Dis.No.16268/79 dated 20.2.80 of the Tahsildar, Srikakulam in violation of the rules of the D-Pattas to Sri Muddapu Gapaldas of Salihundam village and as such it was cancelled by the Joint Collector, Srikakulam Proceedings Rc.No.11814/87 M.6., Dated 16.5.1992.

12. Aggrieved by the orders of the Joint Collector, Srikakulam, the petitioner has preferred an Appeal before the Commissioner of Land Revenue Hyderabad questioning the cancellation order of assignment of the Joint Collector. The CLR vide his Ref. No. BCW 5 / 2514 / 92, Dated 27.8.1994 has confirmed the orders passed by the Joint Collector, Srikakulam Dated 16.5.1992 as the orders of the Joint Collector are perfectly in order.

13. Aggrieved by the above orders, the Petitioner has filed petition before the Government for granting stay orders of Joint Collector Srikakulam passed in Rc.No.11814/87/M6., Dated 16.5.1992 confirmed in CLR's Ref.No.BCW/5/2514/92, Dated 27.8.1994, by directing not to dispossess the petitioner from the scheduled land admeasuring Ac.2-50 cents in sy.No.1 of Salihundam village, Gara Mandal, Srikakulam district pending disposal of the RP.

14. Government examined the matter. In Govt.Memo.No.32037/Assn.I (3)/95-2., Dated 22.12.1999 it was observed and concluded that the D-Form Patta was granted irregularly by the then Tahsildar, Srikakulam in the year 1980, though the land in question is prohibited

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from assignment and the assignee was not a landless person at the time of grant of the D-Form Patta. The Joint Collector, Srikakulam on 16.5.92 as per the rules duly following the due procedure, cancelled the D-Form patta granted to the husband of the petitioner. The CLR also confirmed the orders of the Joint Collector, Srikakulam dated 16.5.92 cancelling the D-Form Patta. As there are no merits in the RP filed, it was not allowed and the RP is accordingly dismissed duly vacating the stay granted by the Government in Memo., Dated 8.5.95.

15. The petitioner i.e., Sri Muddapu Venkata Rao, S/o Sri M. Muddapu Gopal Das filed WP No.563/ 2002 for declaring the action of the 4<sup>th</sup> Respondent i.e., Government in dismissing the Revision confirming the orders of the cancellation of assignment by the 2<sup>nd</sup> Respondent i.e., Joint Collector, SKLM district without hearing the case on merits or giving notice as bad in law, and further declare that the petitioner is entitled to hold the land as a grant of assignment as successor.

16. The Hon'ble High Court while admitting the Writ Petition on 22.4.2002 passed Interim orders in WPMP No.643/ 2001 directing the respondents to continue the petitioner as lessee pending further orders, provided the petitioner is still in possession of the land in question. The learned Counsel for the Petitioner submitted that the petitioner is in possession over the land in question. It was further observed by the Hon'ble Court that there is no dispute that father of the petitioner by name Gopal Das was granted D-Form patta over an extent of Ac.2-50 Cts in Sy.No.1 of Salihundam village by the then Tahsildar, Srikakulam by proceedings in Rc.No.16268/79/A2., Dated 20.2.1980. However the 2<sup>nd</sup> Respondent – Joint Collector by proceedings in Rc.No.11814/ 87 dated 16.5.1992 found that the assigned land is a Nagavali river accretion poramboke and as the Board Standing Order prohibits assignment of river poramboke and as the said land had not been converted as an Ayan and the income of the father of the petitioner renders him ineligible to be considered as a landless poor person, cancelled the assignment. Challenging the orders of the Joint Collector, the mother of the petitioner preferred Revision before the Commissioner of Land Revenue and the petitioner also contested on behalf of his mother and by proceedings dated 27.8.1994 the orders of the Joint Collector dated 16.5.1992 were confirmed. The mother of the petitioner preferred further revision to the Government and during the pendency of the revision, she died and by the impugned proceedings dated 22.12.1999 the orders of the Commissioner, were confirmed.. It was also observed that the case of the petitioner, is that before passing the impugned order, he has not been issued any notice and further after the death of his father and mother, he was granted pattadar pass book and titled deed. His further case is that he is also a landless poor. Further, from a perusal of the impugned order it could be seen that except holding that there are no merits in the revision, no reasons have been recorded. In these circumstances, he felt that it is appropriate to set aside the impugned order and remit the matter to the Government.

17. The Hon'ble High Court disposed of the WP with the following order dated 1-05-2009 -

*“The impugned order is set- aside and the matter is remitted back to the 4<sup>th</sup> Respondent - Government to consider the case of the petitioner afresh and pass appropriate orders in accordance with law after affording the petitioners a reasonable opportunity, within a period of four weeks from the date of receipt of a copy of the order and till then the Interim orders of the Hon'ble Court dated 22.4.2002 shall continue. The WP is accordingly disposed of. No costs.*

18. In pursuance of the above direction of the Hon'ble High Court, the Collector, Srikakulam District has submitted report with the contents which are mentioned earlier, and submitted that there are no merits in this case and liable for dismissal as there is violation of provisions of BSO-15 (35) (8) in assigning a “River accretion” land which is prohibited from assignment, as the applicant was given ample opportunity, before cancellation of D-Patta. It was also reported that the classification of the land is “Vamsadhara River but not Nagavali River. The Tahsildar who is deputed for the hearing has confirmed the same and he stated that it was mentioned as Nagavali River by mistake in the orders of the Joint Collector Dated 16-9-1992.

19. In compliance with the orders of the Hon'ble High Court, Government have re-examined matter carefully and given an opportunity to the Petitioner, and the Case was called for hearing on 25-07-2009 afresh. On the request of the Counsel for the petitioner, the case was adjourned, and posted for hearing on 05-09-2009, 24-10-2009.

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20. Finally, the case was called for hearing on 21-11-2009. Tahsildar, Gara Mandal, Srikakulam Dist., and the Counsel for the Petitioner were present. Counsel for the petitioner requested to grant the time for submitting the written arguments., and he has submitted the Written arguments on 03-12-2009.

21. The Counsel for the Petitioner has contended that the petitioner's father Late Gopal Das was landless poor and he belongs to Weaker Section. The petitioner's father's occupation was recognized and a lease patta was granted by the then Tahsildar, Srikakulam for the extent of Ac.2-50 Cts. and now is in the possession and brought the land fit for cultivation and obtained loans from Visakha Grameena Bank for digging bore well, electric motor and a shed and continued to cultivate the same. He has also submitted that the Hon'ble High Court has passed orders to consider the case afresh. While submitting the details of the case, he has contended that in view of the admitted factum of long permissive possession and enjoyment of the assigned land since 60 years, the D-Form Patta granted by the then Tahsildar, Srikakulam may be continued, if necessary by conversion of the land from Ayan to Assessed Waste land or in the alternative, grant the same by way of lease as observed by the Commissioner of Land Revenue in its order dated 27-08-1994.

22. After perusal of the records of the Collector, Srikakulam and the written arguments submitted by the Counsel for the Petitioner, Government have observed and concluded that the D-Form Patta was granted irregularly by the then Tahsildar, Srikakulam in the year 1980, though the land in question is prohibited from assignment and the assignee is not a landless person at the time of grant of the D-Form Patta.

23. Therefore, it was observed that the Revision Petition has no merits. Hence, no revision can be allowed and accordingly the Revision Petition is dismissed. The orders of the Joint Collector, Srikakulam in Proceedings Rc.No.11814/87 M.6., Dated 16.5.1992 are confirmed. The stay orders granted by the Government earlier in Govt.Memo.No.32037/Assn.I (3)/95, Dated 8.5.95 stands vacated.

24. The District Collector, Srikakulam shall take further necessary further action immediately.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**RAJESHWAR TIWARI,  
SECRETARY TO GOVERNMENT.**

To

The Collector, Srikakulam,.

Sri M. Venkata Rao, s/o M. Gopal Das

Resident of Salihundam, Gara Mandal, SKLMS dist.

Through the Collector, SKLM Dist.

Sri M. Venkata Rao, Advocate for the petitioner,

3-4-174/19, radhakrishna Nagar, Attapur Ring Road,

Hyderabad 500 048.

The Govt. Pleader for Revenue (Assignments)

High Court of AP Hyderabad with a request to appraise the position

Before the Hon'ble High Court.

The PS to Secretary to Government., Revenue.

The Stock file

**//FORWARDED::BY ORDER//**

**SECTION OFFICER.**

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C.NO. 26445/ ASSN.I(1)/ 2009

Case was called for hearing on 21-11-2009. The Tahsildar, Gara Mandal, and the counsel for the petitioner were present. Counsel for the petitioner has submitted the Written arguments on 03-12-2009.

After perusal of the records of the Collector, Srikakulam and the written arguments submitted by the Counsel for the Petitioner, it was observed and concluded that the D-Form Patta was granted irregularly by the then Tahsildar, Srikakulam in the year 1980, though the land in question is prohibited from assignment and the assignee is not a landless person at the time of grant of the D-Form Patta. .

Therefore, it was observed that the Revision Petition has no merits. Hence, no revision can be allowed and accordingly the Revision Petition is hereby dismissed. The orders of the Joint Collector, Srikakulam in Proceedings Rc.No.11814/87 M.6., Dated 16.5.1992 are hereby confirmed. The stay orders granted by the Government earlier in Govt.Memo.No.32037/ Assn.I (3)/95, Dated 8.5.95 stands vacated.

Judgment dictated, and approved. Issue orders.

SECRETARY TO GOVT.(RT)  
REVENUE (ASSIGNMENT)

